

§ 70.504 Conditions to allowance of credit or refund.

No credit or refund to which this subpart is applicable shall be allowed or made, pursuant to a court decision or otherwise, of any amount paid or collected as a tax unless a claim therefor has been filed, as provided in this subpart, by the person who paid the tax and the claimant, in addition to establishing that such claimant is otherwise legally entitled to credit or refund of the amount claimed, establishes:

- (a) That the claimant bore the ultimate burden of the amount claimed, or
- (b) That the claimant has unconditionally repaid the amount claimed to the person who bore the ultimate burden of such amount, or
- (c) That:
 - (1) The owner of the article furnished the claimant the amount claimed for payment of the tax;
 - (2) The claimant has filed with the appropriate TTB officer the written consent of such owner to the allowance to the claimant of the credit or refund; and
 - (3) Such owner satisfies the requirements of paragraph (a) or (b) of this section.

§ 70.505 Requirements on persons intending to file claim.

Any person who, having paid the tax with respect to an article, desires to claim refund or credit of any amount of such tax to which the provisions of this subpart are applicable must:

- (a) File a claim, as provided in § 70.506, and
- (b) Comply with any other provisions of law or regulations which may apply to the claim.

CLAIM PROCEDURE

§ 70.506 Execution and filing of claim.

Claims to which this subpart is applicable must be executed on Form 2635 (5620.8) in accordance with the instructions on the form. (For provisions relating to handcarried documents, see 27 CFR 70.304). Claims for credit or refund of taxes collected by district directors of customs, to which the provisions of section 6423, I.R.C., are applicable and which Customs regulations (19 CFR Part 24—Customs Financial and Ac-

counting Procedure) require to be filed with the appropriate TTB officer, must be executed and filed in accordance with applicable Customs regulations and this subpart. The claim must set forth each ground upon which the claim is made in sufficient detail to apprise the appropriate TTB officer of the exact basis therefor. Allegations pertaining to the bearing of the ultimate burden relate to additional conditions which must be established for a claim to be allowed and are not in themselves legal grounds for allowance of a claim. There shall also be attached to the form and made part of the claim the supporting data required by § 70.507. All evidence relied upon in support of such claim shall be clearly set forth and submitted with the claim.

[T.D.ATF-376, 61 FR 31031, June 19, 1996, as amended by T.D. ATF-450, 66 FR 29030, May 29, 2001]

§ 70.507 Data to be shown in claim.

Claims to which this subpart is applicable, in addition to the requirements of § 70.506 must set forth or contain the following:

- (a) A statement that the claimant paid the amount claimed as a "tax" as defined in this subpart.
- (b) Full identification (by specific reference to the form number, the date of filing, the place of filing, and the amount paid on the basis of the particular form or return) of the tax forms or returns covering the payments for which refund or credit is claimed.
- (c) The written consent of the owner to the allowance of the refund or credit to the claimant (where the owner of the article in respect of which the tax was paid furnished the claimant the amount claimed for the purpose of paying the tax).
- (d) If the claimant (or owner, as the case may be) has neither sold nor contracted to sell the articles involved in the claim, a statement that the claimant (or owner, as the case may be) agrees not to shift, directly or indirectly in any manner whatsoever, the burden of the tax to any other person.
- (e) If the claim is for refund of a floor stocks tax, or of an amount resulting from an increase in rate of tax applicable to an article, a statement as to

whether the price of the article was increased on or following the effective date of such floor stocks tax or rate increase, and if so, the date of the increase, together with full information as to the amount of such price increase.

(f) Specific evidence (such as relevant records, invoices, or other documents, or affidavits of individuals having personal knowledge of pertinent facts) which will satisfactorily establish the conditions to allowance set forth in § 70.504.

(g) The appropriate TTB officer may require the claimant to furnish as a part of the claim such additional information as may be deemed necessary.

§ 70.508 Time for filing claim.

No credit or refund of any amount of tax to which the provisions of this subpart apply shall be made unless the claimant files a claim therefor within the time prescribed by law and in accordance with the provisions of this subpart.

PENALTIES

§ 70.509 Penalties.

It is an offense punishable by fine and imprisonment for anyone to make or cause to be made any false or fraudulent claim upon the United States, or to make any false or fraudulent statements, or representations, in support of any claim, or to falsely or fraudulently execute any documents required by the provisions of the internal revenue laws, or any regulations made in pursuance thereof.

Subpart G—Losses Resulting From Disaster, Vandalism, or Malicious Mischief

DEFINITIONS

SOURCE: T.D. ATF-376, 61 FR 31033, June 19, 1996, unless otherwise noted.

§ 70.601 Meaning of terms.

When used in this subpart, terms are defined as follows in this section. Words in the plural shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms “in-

cludes” and “including” do not exclude other things not named which are in the same general class or are otherwise within the scope of the term defined.

Alcoholic liquors or liquors. Distilled spirits, wines, and beer lost, made unmarketable, or condemned, as provided in this subpart.

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including sake, or other similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume on which the internal revenue tax has been paid or determined, and if imported, on which duties have been paid.

Claimant. The person who held the liquors for sale at the time of the disaster or other specified cause of loss and who files a claim under this subpart.

Commissioner of Customs. The Commissioner of Customs, U.S. Customs Service, the Department of the Treasury, Washington, DC.

Distilled spirits, or spirits. Ethyl alcohol and other distillates such as whiskey, brandy, rum, gin, vodka, in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), on which the internal revenue tax has been paid or determined and, if imported, on which duties have been paid.

Duly authorized official. Any Federal, State or local government official who is authorized to condemn liquors on which a claim is filed under this subpart.

Duty or duties. Any duty or duties paid under the customs laws of the United States.

Major Disaster. A flood, fire, hurricane, earthquake, storm, or other catastrophe defined as a “major disaster” under the Disaster Relief Act (42 U.S.C. 5122(2)), which occurs in any part of the United States and which the President has determined causes sufficient damage to warrant “major disaster” assistance under that Act.

Tax. (1) With respect to distilled spirits, “tax” means the internal revenue tax that is paid or determined on spirits.

(2) With respect to wines, “tax” means the internal revenue tax that is paid or determined on the wine.